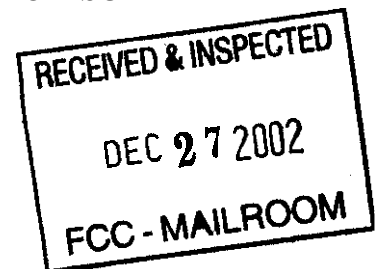


ORIGINALBEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

In the Matter of Applications of)
)
 RESORT AVIATION SERVICES, INC.)
)
 For Renewal of Aeronautical Advisory)
 Station WYT9, Coeur d'Alene Airport,)
 Hayden, Idaho)
)
 and)
)
 KOOTENAI COUNTY COEUR)
 D'ALENE AIRPORT)
)
 For a New Aeronautical Advisory)
 Station at Coeur d'Alene Airport,)
 Hayden, Idaho)

WT DOCKET NO. 02-179

BRIEF OF RESORT AVIATION
SERVICES, INC. IN SUPPORT
OF MOTION FOR SUMMARY
DECISION

Competing applications are set for hearing to commence on January 27, 2003 before the Administrative Law Judge Arthur I. Steinberg. Through a conference call generously arranged by Federal Communications Commission (FCC) attorney Dana Leavitt together with John Schauble, who has had extensive experience as an FCC hearing officer, counsel for the applicants have been advised of the time and costs involved, the uncertainty of the results and of the rarity of contests for Unicorn licenses which are not revenue generators.

Nonetheless, good faith efforts to reach settlement have been unavailing. In the required submissions, the parties have identified a total of 16 possible witnesses and in excess of 60 possible exhibits.

After reviewing discovery responses and after taking the depositions of Coeur d'Alene Airport Manager Greg Delavan and Operations Manager Phillip Cummings, Resort Aviation has reached the conclusion that this lengthy and costly hearing, that would take time of the administrative judge and FCC counsel away from what certainly must be far more weighty cases, can be avoided by entry of a summary decision as allowed by Code of Federal Regulations Title 47, Part 1, Subpart A, Section 1.25l.

As to the issues defined in the Hearing Designation Order released July 2, 2002 by D'wana R. Terry, there is no genuine issue of material fact for determination at the hearing.

With the motion for summary decision, Resort Aviation is filing the following:

1. Certification of Excerpts from the Depositions of Greg Delavan and Phillip Cummings.

2. Certificate on Answers of Kootenai County to Interrogatories
No. 16 and 37

3. Affidavit of Kathlean Garren.

4. Affidavit of Roy DeFranco.

5. Affidavit of Michael Graziani.

6. Certification on Unicom License and Flight Guide for
Airports at Bend, Oregon and Daytona Beach, Florida.

These pleadings are directly responsive to the issues identified in
the Hearing Designation Order which directed to FCC Administrative
Law Judge to resolve the following:

a. To determine which applicant would provide the public with
better Unicom service based on the following considerations:

- (1) location of the fixed-based operation and proposed
radio station in relation to the landing area and
traffic patterns;
- (2) hours of operation;
- (3) personnel available to provide Unicom service;
- (4) experience of applicant and employees in aviation and
aviation communications;
- (5) ability to provide information pertaining to primary
and secondary communications as specified in Section
87.257 of the Commission's Rules;"

¹The applicable section of the Commissioner's Rules is properly Section
87.214, a copy of which is attached to this brief.

- (6) proposed radio system including control and dispatch points; and
- (7) the availability of the radio facilities to other fixed-based operators;

b. To determine, in light of the evidence presented, which application, if any, should be granted to best serve the public interest, convenience and necessity.

Resort Aviation has provided to the public Unicom service that has met all of the identified considerations since acquiring the Unicom license in 1996 and will continue to do so. See detailed item by item response in Affidavit of Chief Pilot Roy DeFranco.

Kootenai County Coeur d'Alene Airport (hereafter Coeur d'Alene Airport) has no experience, no qualifications and most important no identified, workable plan of operation as of December 5, 2002 when the two men responsible for the operations were deposed.

When asked if the Coeur d'Alene Airport would assume the full functions of operating its Unicom procedure, Airport Manager Greg Delavan replied:

Delavan **A:** I really don't desire to do the UNICOM functions. We certainly could be properly trained and provide that function, but that's not something that I really wish to do.

Reed **Q:** It's not something you wish to do?

Delavan **A** That's correct.

Delavan Deposition p. 57, L. 23 -25; p. 58. L. 1 - 4.

So who did Airport Manager Delavan think should be operating the Unicorn if Coeur d'Alene Airport were granted the license?

Reed **Q**: Well, who is going to do the Unicorn function then?

Delavan **A** It very well could be licensed to Resort, if Resort was interested in continuing to provide that function.

Delavan Deposition, p. 58, L. 5 - 9.

Airport Manager Delavan's stated motive for seeking the Unicorn license was not to operate the Unicorn but to remedy what he perceived to be a possible problem with the Federal Aviation Administration (FAA) in regard to communication on the Common Traffic Advisory Frequency (CTAF).

In Mr. Delavan's opinion, FAA guidelines required the use of the Unicorn licenses and frequency to allow Coeur d'Alene Airport ground personnel and others such as Larry Booher of Southfield Fuel/HeliProp Aircraft and Hans Dyroy of Action Aviation Service to make safety related communication on the CTAF. Delavan Deposition, p. 37, L. 3 - 13; p. 46, L. 5 - 11; p. 50, L. 19 - 22.

Because ". . .the FAA rules and the FCC rules don't necessarily match 100 percent.", Mr. Delavan believed that the Coeur d'Alene

Airport should receive the Unicorn license and sublicense it to all others on the airport who had need to communicate on CTAF frequency. Delavan Deposition, p. 48, L. 14 - 15; **p. 50, L. 19 - 22.**

In fact, the FAA has made regular inspections, is totally aware of the communications made by ground personnel, Larry Booher and other for safety purposes on the CTAF frequency and has not raised any objection or complaint about the safety procedures being followed at the airport. Delavan Deposition, p. 45, L. 2 - 25; p. 46, L. 1 - 9; p. 47, L. 11 - 17; p. 48, L. 1 - 13; p. 52, L. 11 - 13.

According to Mr. Delavan, neither Southfield Fuel/HeliProp Aircraft nor Action Flying Service had expressed any interest in operating the Unicorn. Delavan Deposition, p. 53, L. 12 - 14. Mr. Delavan had no plan whatsoever for operating the Unicorn other than to give a sublicense to Southfield Fuel and Action Flying Services to communicate on CTAF for safety concerns. Delavan Deposition, p. **53**, L. 22 - 25; p. 54, L. 1 - 25; p. 55, L. 1 - 19.

Coeur d'Alene Airport attorney John C. Cafferty asked a lengthy question, positing the assumption that Coeur d'Alene Airport would receive the Unicorn license and then sublicense to others in the airport. The question concluded with what was your plan and who was eligible?

Cafferty Q: That still leaves out there who will be responding to the Unicom requests from pilots seeking information about the airport. Who would be responding to that if the airport were to obtain this license?

Delavan A: In my opinion that remains to be determined.

Cafferty Q: So it could be anyone that meets the requirements, has the facilities and they do a proper job would be your answer then, I'm guessing?

Delavan A. Yes.

Delavan Deposition, p. 78, L. 10 - 18.

In short, Coeur d'Alene Airport has no plan, according the Airport Manager Delavan, except to obtain a license to satisfy a concern that has not been expressed by the FAA nor acted upon. Coeur d'Alene Airport does not desire to operate the Unicom and does not know who will!

Resort Aviation asked in Interrogatory No. **37** why the Coeur d'Alene Airport was opposed to having the license of Resort Aviation renewed. The answer, verified by Greg Delavan, was directly contrary to his October 28, 2001 cover letter to the FCC asking that the renewal application of Resort Aviation be denied. (Kootenai County Exhibit 22.)

ANSWER TO INTERROGATORY NO. 37: ...Kootenai County is not opposed to Resort Aviation Services, Inc. operating a Unicom license. It is the opinion of Kootenai County that if only one Unicom license is to be allowed at the Coeur d'Alene Airport that Kootenai County would be the better holder of the Unicom license. If possible, Kootenai County would like for both Resort

Aviation Services, Inc. and Kootenai County to each hold a Unicom license.

Certification on Answers to Interrogatories.

Operations Manager Phil Cummings was on a different wave length. He had a plan contrary to the representations made by Mr. Delavan. Mr. Cummings stated that both Larry Booher of Southfield Fuel, Inc. and Harry Dyroy of Action Flying Service wanted to have Unicom licenses. Cummings Deposition, **p.** 14, L. 11 - 14; p. 15, L. 25; p. 16, L. 1 - 12.

Mr. Cummings gave an accurate description of the facilities at Resort Aviation, Southfield Fuel/HeliProp Aircraft and Action Flying Service. Resort Aviation has three buildings, the Louisiana Pacific Corporate facility, the hangar, office and lobby purchased from Empire Airlines and a county hangar and 15 tie downs leased from the county. Cummings Deposition, p. 11, L. 11 - 23. Mr. Cummings testified that Resort Aviation had always worked hard to come into compliance if there was a deficiency and always tried to meet the standards. Cummings Deposition, p. 12, L. 16 - 18, 25; p. 13, L. 1.

Southfield Fuel/HeliProp Aircraft, owned and operated by Larry Booher and his wife with one hangar and office, had two 12,000 gallon

underground tanks and two trucks. Cummings Deposition, p. 13, L. 8-14.

Action Flying Service is a one man flight instructor operation with a 300 gallon fuel tank not for public sale. Cummings Deposition, p. 13, L. 17 - 19; p. 50, L. 5 - 6.

Mr. Cummings first contemplated multiple Unicom licenses being issued to the Coeur d'Alene Airport, Larry Booher and Action Flying Service which appeared to be possible because there was a RCO and a RTR located on the airport. Cummings Deposition, p. 15, L. 20 - 25; p. 16. L. 1 - 19.

After further conversation with Donald Marsh, identified as being with the license bureau of the FCC, Mr. Cummings came up with the idea of the Coeur d'Alene Airport being issued the Unicom license and then allowing other qualified users or FBO's to operate off the airport license under a letter of agreement with the airport. Cummings Deposition, p. 16, L. 20 - 25; p. 17, L. 1 - 7. Mr. Cummings' anticipated result was this:

Cummings A Yes, That way Resort would still have the opportunity to operate UNICOM, as would Southfield, as would Action Flying Service.

Cummings Deposition, p. 18, L. 1 - 3.

The question then became the communication with Unicorn by a pilot asking for the primary information specified in CFR §87.213, condition of runways, wind conditions and weather:

Reed Q: If you have what you're just talking about, four possible users on sublicenses under the airport, when that pilot coming in calls, who answers?

Cummings A That is a problem, isn't it? . . .

Cummings Deposition, p. 18, L. 9 - 12.

Mr. Cummings then gave his solution based on conversations with "probably a dozen airports": a simple radio repeater in the office of the Coeur d'Alene Airport with Resort Aviation, Southfield Fuel/HeliProp Aircraft, Action Flying Service and anyone else who wanted to play being supplied with equal five watt radios. Cummings Deposition, p. 18, L. 22 - 25; p. 19, O. 1; p. 20, L. 13 - 16; p. 21, L. 17 - 19.

With all sublicensees having equal five watt radius, the first to respond to the pilot calling on the Unicorn cannot be cut off or bumped off or stepped on. Cummings Deposition, p. 20, L. 14 - 23; p. 21, L. 1 - 8. Mr. Cummings summarized this preferred system:

Cummings A: That's correct. Resort could not cut off Southfield, and everybody is on a fair playing field. It's all equal. That's - like I say, that's one of the best options we have heard, and it's something we've looked into. It's not cheap, but it is fair.

Cummings Deposition, p. 21, L. 23 - 25; p. 22, L. 1-2.

Mr. Cummings anticipated expanding the number of those on the airport being authorized to use the Unicom system:

Cummings **A:** . . . They (Panhandle Helicopter) could turn around and petition **us** for a letter of agreement to operate it. Then you've got **20** people out there, if they qualify.

Reed **Q:** **You** could potential have **20** people, though?

Cummings **A:** Sure, unless you limit it. And we have -- we haven't even gotten to that point yet.

Cummings Deposition, p. 24, L. 15 - 20.

What is contemplated is a Biblical Tower of Babel: up to 20 allowed users of the Unicom license with the first in time making the response to questions from incoming pilots. Cummings Deposition, p. 20, L. 24 - 25; p. 22, L. 1 - 3.

Just as with Mr. Delavan, Mr. Cummings was not anticipating anyone employed by the Coeur d'Alene Airport having anything to do with operation of the Unicom except that the Coeur d'Alene Airport would be reserving the right to remove use by a sublicensee if the Coeur d'Alene Airport believed there was a violation. Mr. Cummings described the procedure he represented as being followed at Daytona Beach, Florida, at an airport that he said was using the radio repeater system:

They have the license and the three different **FBOs** are suboperators off **of** their license. And he said we don't have a

problem now. He said if -- if they hear of any misuse on it, they go down and they pull that letter of agreement off the wall, which is required to be there just like a license is. And once it's pulled, if they access it, they turn them into the FCC, and the FCC violates them.

Cummings Deposition, p. 19, L. 15 - 22.

Given the continued difficult relationship that Resort Aviation has had with Mr. Delavan, giving the opportunity to the Coeur d'Alene Airport "to pull the letter of agreement off the wall" and then turn them in to see if the FCC violates them is a very chilling prospect.

In fact, as of December 5, 2002, Coeur d'Alene Airport did not have any clear idea of what it would be doing or requiring if it received a Unicorn license:

Cummings **A:** ..We haven't got to that decision point yet to get the entities who would choose to operate this together to say, okay, help us put together something to make this work; that's all we're trying to do. So how specifically we would choose to operate this together to say, okay, help us put together something to make this work; that's all we're trying to do. So how specifically we would choose to do it at Coeur d'Alene, I don't know. We have looked at a lot of different things and --

Reed Q: But you're still uncertain?

Cummings **A:** Oh, I think we'd use the letter of agreement enforcement, and we have looked into supplying the radio gear, which is probably the cleanest we've seen. But we've made no decision on how that would actually take place.

Curnrnings Deposition, p. 19, L. 25; P. 20, L. 1 - 12.

Neither did Mr. Delavan:

Reed Q: And as I understood John was asking you if as it would develop, that you would set up a situation where others could respond on your UNICOM license, carrying out the UNICOM function, somebody other than the Coeur d'Alene Airport itself?

Delavan **A** That's specifically contemplated. You know, we haven't gone down that road yet to define the parameters.

Reed Q: There was some discussion, not here, but just informal that I had with your attorney, in which there was some suggestion of having a rotating method of persons, one entity might have it for a month and another might have it for a month. Has that been something that's been contemplated?

Delavan **A**: I wasn't part of that conversation, so --

Reed Q: Well, no. Are you aware of that as a responsibility? Is that something that you thought about?

Delavan **A** No. I haven't. I didn't initiate that nor have I been involved in the conversation.

Reed Q: So at this point you simply haven't made -- haven't got to that place yet of determining --

Delavan **A**: Correct.

Delavan Deposition, p. 98, L. 10 - 25, p. 99, L. 1 - 7.

Mr. Cummings specifically identified the Bend Airport as being a place where the publicly owned airport was using the repeater system he was describing:

Cummings **A** When that radio is keyed through the repeater that sits at the airport office no one else can talk on it. So another FBO cannot step on it, okay. Gary Latellia over in, I believe it's Bend, Oregon, they actually run the airport -- the airport actually runs the UNICOM, okay, with FBO personnel.

Reed Q: All right.

Cummings **A:** Okay. That worked for them. . .

Cummings Deposition, p. 19, L. 3 - 10.

The airport at Bend is owned and operated by the City of Bend. There is a major problem with Mr. Cummings' promulgation of the success in Bend in having the public airport running the Unicom with FBO personnel operators. The Unicorn license at the Bend Airport was issued by the FCC to The Flight Shop, the only FBO on the airport, and not to the City of Bend. See pages 1 and 2, Certification on Unicom Licenses and Flight Guide for Airports at Bend, Oregon and Daytona Beach, Florida. The scheme described by **Mr.** Cummings does not exist at the Bend Airport.

In his enthusiasm, for the repeater system, Mr. Cummings identified Daytona Beach, Florida as using the radio repeater system.

Cummings Deposition, p. 19, L. 10 - 22. Attached to the certification are the Flight Guide pages for Daytona Beach International Airport. Certification, pp. 3 - 6. While it is possible that an incoming pilot could call in to a specific FBO on the Unicorn and that the FBO would be authorized by the public airport to answer, the scenario portrayed by Mr. Cumrnings of no central communication and each FBO being furnished with a five watt radio to compete is highly improbable.

Daytona Beach, with a population of approximately 250,000 in a densely settled state, is an international airport with a control tower. Certification p. 3. There are 281 aircraft based on the field and aircraft operation averaging 998 per day. Ibid.

The Tower of Babel with scrambling FBO Unicorn volunteers should be absolutely unacceptable to the FCC, the FAA and the Dayton Beach Airport authorities for safety reasons.

In Mr. Delavan's cover letter of October 28, 2002 with his FCC application, he stated in part:

We have several operators on the Airport who would like to apply for a Unicorn License. We would like to allow other qualified, airport based operators to have the ability to operate Unicorn under our License by Letter of Agreement with Kootenai County. This would allow the airport to assure proper training of operators to maintain the emphasis on aviation safety and to have some control over inappropriate use of the frequency.

Kootenai County Exhibit 22.

The only airport based operation with qualified operators trained with use of the Unicom is Resort Aviation with six employees holding certificates of training. Affidavit of Roy DeFranco, p. 4. Coeur d'Alene Airport admitted in its answer to interrogatory No. **16** that ". . .there are no persons in the employ of Kootenai County who are qualified Unicom operators. . ." Certification on Interrogatories. Mr. Delavan testified that he had no intention of providing Unicom training to his employees. Delavan Deposition, p. 57, L. 23 - **25**; **p.** 58, L. 1 - 4.

Phil Cummings who, as Operations Manager, had the responsibility for finding and resolving all complaints about tenants on the airfield, was aware of only one problem with the operations of the Unicom by Resort Aviation. Cummings Deposition, **p.** 30, L. 5 - 14. The microphone on two or three occasions had locked down, but after Resort Aviation had replaced the microphone on August 30, 2002, there were no further problems. Cummings Deposition, p. 30, L. 15- 25;

Mr. Cummings had no complaints about any inappropriate use by Resort Aviation of the Unicom frequency. Cummings Deposition, p. **31**, L. 5 - 25; p. 32, L. 1- 15.

The exhibits submitted December 12, 2002 by Coeur d'Alene Airport include something never previously mentioned: SuperUnicom.

Kootenai County Airport Exhibit 27, 15 unnumbered pages apparently obtained from the web page on December 11,2002. The SuperUnicom is a 260 pound, self-contained weather system, Unicorn operator and Unicorn receiver all contained in one **box**. See Exhibit 27, third page, reprint from Plane & Pilot, December, 1999.

The SuperUnicom is totally automated with recorded messages transmitted in response to calls from an incoming pilot. It may well be a useful substitute at small airports without trained Unicorn operators. SuperUnicom eliminates and effectively bars any human use of the Unicorn from the airport. If SuperUnicom is now being proposed as an alternative system for the Coeur d'Alene Airport, it would be in total conflict with the purpose stated in the October 28, 2001 cover letter and in the depositions of both Mr. Cummings and Mr. Delavan "to allow other qualified airport based operators to have the ability to operate Unicorn under our license. . .".

SuperUnicom would, however, completely accomplish what Resort Aviation has feared was the real purpose of the competing application of Kootenai County Coeur d'Alene Airport: Cutting off permanently any operation of the Unicorn system in any form by Resort Aviation. Super-Unicorn is the poison pill.

In a joint telephone conference call made possible by attorney Leavitt, both counsel talked with Kim Kiplinger with the FCC technical department about the possibility of multiple users of a single Unicorn facility at an airport. Ms. Kiplinger advised that with a single transmitter the method for more than one user to communicate would be through using wire line control from each user to the transmitter.

At any airport, such a wire line control would necessarily have to be a buried line. Michael Graziani, Line Manager for Resort Aviation in charge of outside field supervision operation, obtained an estimate of \$26,000 as the cost of installing an underground cable that would connect Resort Aviation, the Coeur d'Alene Airport office and Southfield Fuel. Affidavit of Michael Graziani, p. 2. The prospective users are at a considerable distance apart from each other as can be seen in the aerial photograph attached as Exhibit B to the Affidavit of Roy DeFranco.

Ms. Kiplinger was not aware of any acceptable type of radio transmission for Unicorn use in the manner described by Mr. Cummings. If underground line control is the only method of connecting multiple Unicorn users of a single transmitter, the cost of construction plus costs for easements and permits is, like almost everything else about the Coeur d'Alene Airport Unicorn proposal, unknown.

Resort Aviation acquired the Unicorn license by assignment in 1996 at the time it purchased Empire Airlines which had previously operated passenger service to and from Boise. Affidavit of Kathleen Garren, p. 2, Exhibits A, B and C. Resort Aviation developed a Unicorn manual and a company policy on emergencies and all of its operators have completed Unicorn training. Affidavit of Kathleen Garren, pp. 2 - 3, Exhibits E and F.

While it is the function of the Administrative Judge to determine which applicant will provide the public with better Unicom service during the next period of the license, past experience must be given recognition as prologue. Resort Aviation has in place a going Unicorn operation that has been and will continue to provide the public full and complete Unicorn service.

Following the criteria identified in the Hearing Designation Order, Resort Aviation is centered close to the landing area and traffic patterns. Affidavit of Roy DeFranco, p. 2. Exhibits A, B and C. The hours of operation are 12 in the summer and 10 in the winter, with on-call numbers. Id. p. 3.

Resort Aviation has six fully trained Unicorn operators, four of whom have six to nine years of experience. Id., pp. 3- 4. The information communicated is as specified in CFR §87.213. The radio

system in existence and used and which will be retained is top of the line. *Id.* p. 5. Everyone on the airfield knows the Unicom frequency and Resort responds accurately and properly to all inquiries about field based operators. *Id.* p. 5.

Applying those same considerations to Coeur d'Alene Airport using the information from the depositions and discovery and their own exhibits reveals this picture:

(1) Location of the fixed-based operations and proposed radio station in relation to the landing area and traffic patterns.

A radio station transmitter at the Coeur d'Alene Airport office would be adequately located in relation to the landing area and traffic patterns. However, the Coeur d'Alene Airport does not intend to use the Unicom itself in connection with anything to do with landing or traffic. Southfield Fuel/HeliProp aircraft is remote from the landing area and traffic patterns. See Aerial Photograph, Exhibit B to DeFranco Affidavit.

(2) Hours of Operation.

Coeur d'Alene Airport intends to use the Unicom frequency at all hours for CTAF communication but not to make any use for Unicom communications.

(3) Personnel available to provide Unicom services; and (4) experience of applicant and employees in the aviation and aviation communications;

Mr. Delavan does not intend to have any Kootenai County personnel provide Unicom Services. The employees have experience in aviation and aviation communications but, except for Mr. Delavan and Mr. Cummings, have no experience with Unicom operations.

(5) Ability to provide information pertaining to primary and secondary communications as specified in Section 87.257 (Section 87.213) of the Commission's Rule.

Coeur d'Alene Airport does not intend to provide any primary or secondary Unicom communications.

(6) Proposed radio system including control and dispatch points;

Undetermined. The proposals, not yet decided upon, have been identified as (1) wire control underground cable transmission to selected users or (2) a radio repeater identified by Mr. Cummings as in use at the Bend Airport where it is not and at the Daytona Beach International Airport where it would not be or (3) possibly as a just revealed SuperUnicom. The straight answer at this point is that nothing realistic has been proposed. "We haven't quite got to that point yet." Cummings Deposition, p. 25, L. 19.

(7) The availability of the radio facilities to other fixed-basis operators;

Coeur d'Alene Airport has expressed great willingness to make the radio facilities available to other fixed based operators. Those in charge have just not yet decided how to do it.

CONCLUSION

Be it remembered that this administrative contest was not commenced by Resort Aviation. Routine application for renewal of a Unicorn license, originally issued to Empire Airlines as an FBO, many years ago, was made by Resort Aviation on October 1, 2001 with notice of renewal sent to Coeur d'Alene Airport. Affidavit of Kathlean Garren, p. 2, Exhibits A, B, C and D.

On October 28, 2001 Airport Manager Greg Delavan filed a competing application requesting that the Resort Aviation application be denied but gave no notice to Resort Aviation. Delavan Deposition, p. 42, L. 20 - 23.

If Mr. Delavan is to be believed, his primary motivation was to obtain the Unicorn license so that the airport personnel and others could use the CTAF frequency for safety purposes without fear of being charged with a violation by the FAA. In the time period covered in the experience of Mr. Delavan and Mr. Cummings, the FAA with full

knowledge of all communications procedure with CTAF had never raised an objection:

Q. Any nobody from the Federal Government has come and told you that that's an improper thing to do?

A. No. As a matter of fact, we have licenses for the other frequencies as well. It's the one that we don't have the license for currently is 122.8, and we should.

Delavan Deposition, p. 101, L. 3 - 9.

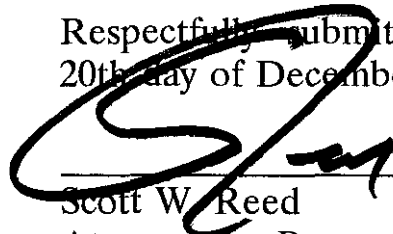
The practice of Coeur d'Alene Airport personnel and others communicating on the CTAF frequency without the Unicom license must have existed since the Unicom license was first issued all without objection from the FAA. The exact parallel must be going on at every small airport, such as Bend, Oregon, wherever an FBO holds the Unicom license.

It is glaringly apparent from the testimony of the Airport Manager and the Operations Manager that the application of Coeur d'Alene Airport and the plan of operation, or more accurately, conflicting and inoperable plans, will not and cannot ". . . provide the public with better Unicom service" based on the considerations set forth in the Hearing Designation Order.

Resort Aviation has been providing and is ready, able and willing to continue to provide better Unicom Service.

There are no genuine issues of material fact to be determined at the totally unnecessary hearing. Resort Aviation is entitled to a summary decision.

Respectfully submitted, this
20th day of December, 2002.



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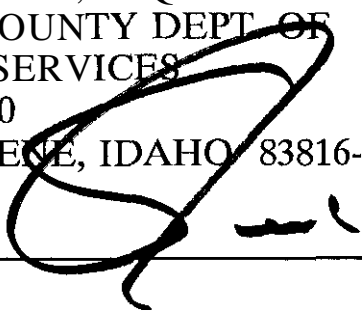
I hereby certify that a true and exact copy of the foregoing was sent by Federal Express on December 20, 2002 to:

DANA LEAVITT
ATTORNEY AT LAW
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ADMINISTRATIVE LAW JUDGE
ARTHUR I. STEINBERG
FEDERAL COMMUNICATIONS
COMMISSION
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and mailed by first class mail, postage prepaid to:

JOHN CAFFERTY, ESQ.
KOOTENAI COUNTY DEPT OF
LEGAL SERVICES
P. O. BOX 9000
COEUR D'ALENE, IDAHO 83816-9000

A handwritten signature in black ink, appearing to be "John Cafferty", is written over a horizontal line. The signature is stylized with a large loop and a trailing flourish.

Citation/Title

47 ~~CFR~~ § 87.213, *Scope of service.*

*152844

CODE OF FEDERAL REGULATIONS
 TITLE 47--TELECOMMUNICATION
 CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION
 SUBCHAPTER D--SAFETY AND SPECIAL RADIO SERVICES
 PART 87--AVIATION SERVICES
 SUBPART G--AERONAUTICAL ADVISORY STATIONS (UNICOMS)

Current through May 4, 1999; 64FR 24018

§ 87.213 *Scope of service.*

(a) ~~An~~ aeronautical advisory station (unicom) **must provide** service ~~to any aircraft station upon~~ request and without discrimination. A unicom **must** provide impartial information concerning available ground services.

(b)(1) Unicom transmissions **must be** limited to ~~the necessities of~~ **safe** and expeditious operation of aircraft such ~~as~~ condition ~~o~~ runways, **types** of fuel available, wind conditions, ~~weather~~ information, **dispatching, or** other necessary information. At any airport at which a control tower, control tower remote communications outlet station (RCO) or FAA flight service station **is** located, unicom **must not** transmit information **pertaining** to the conditions of runways, wind conditions, or weather information during the hours of operation of the control tower, RCO or FAA service station.

(2) On a secondary basis, unicom ~~s~~ may transmit communications which pertain to the efficient portal-to-portal transit of an aircraft, such as **requests** for ground transportation, food or lodging.

(3) Communications between ~~unicom~~s and air carrier **must be** limited to the necessities of **safety** of life and property.

(4) Unicom ~~s~~ may communicate with aeronautical utility **stations** and ground vehicles concerning runway conditions and **safety** hazards on the airport when neither a control tower nor FAA flight service station **is in** operation.

(c) Unicom ~~s~~ **must not be** used for air traffic control (ATC) purposes other than to **relay** ATC information between the pilot and air traffic controller. Relaying of ATC information is limited to the following:

(1) Revisions of ~~proposed~~ departure time;

(2) Takeoff, arrival ~~or~~ flight **plan** cancellation time;

(3) ATC clearances, ~~provided~~ a letter of agreement **is** obtained from the FAA by the licensee of the **unicom**.

[55 FR 30464, July 26, 1990]

<General Materials (GM) - References, Annotations, or Tables>